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Supreme Court of the United States

October Term, 1973

No. 73-783

FRANCES SHARP LICHTENSTEIN,

Petitioner,

vs.

MAURICE LICHTENSTEIN and DARBY FARMS, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Maurice Lichtenstein, prays that the petition for writ of certiorari filed in the above case be denied for the reasons hereinafter set forth.

OPINIONS BELOW

The opinions below are set forth in the petition.

QUESTIONS PRESENTED

1. Does the sole fact that a litigation over a property settlement agreement between a New Jersey wife and a Pennsylvania husband was brought into federal courts on the basis of diversity of citizenship constitute that litigation one involving a federal question of such public importance as to warrant a review by the United States Supreme Court on a writ of certiorari?

2. Where a Circuit Court of Appeals has reversed the findings of a district court on the basis that such findings were "clearly erroneous," on a matter concerning a marital property settlement dispute, should such litigation be reviewed by the United States Supreme Court on certiorari?

3. Should counsel fees of the petitioner be imposed on respondent where the basic issue of the litigation involved was created by the faulty draftsmanship of petitioner's own attorney in the preparation of the Settlement Agreement, the enforcement of which was the objective of the litigation?

4. Was the respondent guilty of misconduct in the course of the subject litigation which would warrant the imposition of appellant's counsel fees upon him, where there were three appeals taken by respondent, the first and third of which resulted in a complete reversal of the district court's judgments and the second of which resulted

in a substantial modification of the district court's judgment, and where proceedings in the district court were taken pursuant to the mandate of the Circuit Court of Appeals to determine the basic issue involved?

Respondent objects to the wording in each of the four questions presented in the petition in that such wording wrongfully assumes the exitence of facts which are false. Each of said questions state or specifically implies that respondent was a contumacious and vexatious civil litigant. The Circuit Court of Appeals specifically declared that the district court's findings that the respondent's activities were inconsistent with good faith was "clearly erroneous" (Pet. Appendix "A", pp. 22, 23). Petitioner, throughout these entire proceedings, fails to perceive that respondent cannot be adjudged and is not a contumacious and vexatious civil litigant when the findings of the district court, upon which such characterization was based, were reversed by the Circuit Court of Appeals.

JURISDICTION

The jurisdiction requirement is adequately set forth in the petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner cites Sections 1 and 2 of Article III in the United States Constitution as the constitutional provision involved. The only pertinent or relevant part of these citations is that part of Section 2, which provides that the judicial power shall extend to all cases between citizens of

different states. There is actually no constitutional question involved in this case for the jurisdiction of the federal courts has never been questioned. The only question is a factual one — whether or not the respondent has been guilty of improper conduct which would warrant the imposition of petitioner's counsel fees upon him. Clearly, there is no important question of constitutional law requiring review by this Court.

STATEMENT OF THE CASE

The facts of the case are stated fully and fairly in the opinion of the Circuit Court of Appeals filed June 29, 1973 (Pet. Appendix, pp. 20-24).

However, respondent is constrained to point out examples of misstatements of fact, half-truths, and wrongful omissions of facts in petitioner's Statement of the Case, which could be seriously misleading and prejudicial to respondent.

1. On page 6 of the petition (last sentence - first paragraph), petitioner wrongfully states the issue and wrongfully assumes that the respondent contumaciously and without color of right abused the judicial process. As previously stated, the findings of the district court upon which these charges were based, were reversed by the Circuit Court of Appeals as "clearly erroneous" (Pet. Appendix "A", pp. 22, 23).

2. On page 10 the Petitioner states that the Court of Appeals affirmed the order of the district court directing respondent to pay the sum which the accountant had

determined to be due. The petitioner omitted the very crucial part of that decision of the Court of Appeals which modifies the order of the district court by reducing the amount ordered to be paid from $59,756.44 to $44,331.44. That circuit court opinion also stated that the district court was in error in accepting petitioner's evidence nearly two years after it was to have been produced to the accountant. It is also significant that the amount found to be due was increased by the accountant as the result of a secret meeting between the accountant and petitioner's attorney without any notice whatsoever to respondent's counsel, without respondent's counsel being present or having an opportunity to explain or defend against the increased charges (Pet. Appendix "C", p. 36).

This modification by the circuit court of the district court's order clearly proves that respondent had the right to appeal the subject order of the district court. The omission of this fact is quite significant and shows the complete lack of candor and an attempt to conceal an important factor in determining the propriety of awarding counsel fees.

3. On page 12 of the petition, it is stated that the respondent (the individual defendant) did not offer any controverting evidence at the hearing before the district court on the petition to award counsel fees. Omitted is the fact that the district court flatly refused to hear any argument whatsoever to show that counsel fees should not be awarded to petitioner and limited the testimony strictly to the amount of the counsel fees, which the district court said would be awarded regardless of any authorities cited by the respondent in respondent's brief to the district court.

Statement of the Case

4. On page 12 (line 27), petitioner states that respondent's "own attorney had testified that the right to file exceptions had not been considered when the Settlement Agreement was drafted." This is not true. The testimony of respondent's then lawyer in the subject hearing (Hearing District Court, 8/12/70, NT78-79) included the following:

> "... but I drew a distinction in my own mind between that kind of a situation and the kind of situation that would arise if Stanley Merves (the accountant), three months later were to say, 'Here is the final audit, and pay over X number of thousands of dollars', and the final audit as an audit was simply wrong or did not follow the explicit directions of the agreement,(emphasis supplied) 3% instead of 5%, for example on its face. I did not view that kind of direction by Stanley Merves three months later as being the equivalent of an equity order, the violation of which would be a contemptuous act." (Emphasis supplied.) "I think that some of Mr. Merves' duties could not clearly, to be, be final and conclusive." (Emphasis supplied.)

On NT70 in the hearing before the district court (Appendix, p31A — Appeal No. 72-1924, 3rd Cir.) respondent's then attorney read into the testimony the following excerpt from his letter to respondent:

> "Please advise me immediately whether you want me to continue to represent you in this matter. I would object to any partial distribution,

> or any distribution at all until final settlement which I hope will be scheduled for early next week, and I would take issue with some of the conclusions reached by Merves (the accountant)." (Emphasis supplied.)

5. On page 13, petitioner concludes the statement of the case with an excerpt from the opinion of the district court declaring that the actions of the respondent (individual defendant) were most vexatious and "based on contentions completely unfounded." Again, petitioner has pointedly omitted the next, final and most important sequential fact in the history of the case, namely, that this opinion of the district court was reversed by the Court of Appeals for the 3rd Circuit which found "clearly erroneous," the district court's findings (Pet. Appendix "A", pp. 22-24).

PREFACE TO ARGUMENT

Before proceeding to the body of the argument and to avoid unfair prejudice and a misconception of the true facts, respondent is compelled to point out various misstatements of fact, omissions of crucial facts and misleading and deceptive assertions in the petition, this time in the "Reasons for Granting the Writ" as follows:

On page 14 the petition again wrongfully states that the "individual defendant" (respondent) contumaciously, vexatiously and capriciously sought to evade the payment of that which the agreed-upon accountant had determined his obligation to be." This simply is not true. The respondent honestly believed the accounting was erroneous. He was advised by his attorneys that he had the

right to file exceptions to it. The petitioner knows the contempt citation was reversed and must have read the opinion of the appellate court (Pet. Appendix "A", p. 23, line 14) finding that the respondent (appellant) refused to remit the deficiency because he believed the accountant erred and that he had the right to appeal on exceptions. Therefore, respondent's actions were not contumacious or vexatious and it's manifestly opprobious to wrongfully attempt to so characterize them here and in other parts of the petition.

Also, on page 14, false impressions were given where it is stated that (line 23) (1) no exceptions were ever filed, and (2) that (line 24) respondent's (individual defendant's) attorney had drafted the Settlement Agreement and (3) that (line 26) respondent's attorney had never contemplated the filing of judicial exceptions.

The misleading statement that respondent's attorney never contemplated the filing of exceptions has been refuted previously in this brief.

As to the statement that no exceptions were ever filed, the specific items that respondent wanted to except to were set forth in detail with complete explanations of the basis of each exception in the counter reply of defendant (respondent) filed in the district court on April 23, 1969, (Appendix, p. 150a, Appeal No. 19-352) and again in respondent's motion for finding that defendant has paid in full all sums due under Settlement Agreement, filed June 17, 1970, in the district court (Appendix, p. 249A, Appeal No. 19-352 to Circuit Court of Appeals for the 3rd Circuit). The latter motion was denied by the district court.

Preface to Argument

The petitioner's statement that respondent's attorney had drafted the Settlement Agreement is contradicted by the testimony of her own lawyer, Lewis Kates, Esquire, when he testified in the hearing of August 12, 1970, before the district court. On NT12 of that hearing (Appendix, p. 300, Appeal No. 19352), Mr. Kates testified as follows:

> "A. Because I think the last agreement which was finally executed on November 27th was completed about November 10th, and I believe you will find my records show and my recollection is that that agreement was based upon my draft to Ted Mann . . . ."

(Mr. Mann was respondent's former attorney who Mr. Kates states in the petition drafted the Settlement Agreement.)

Also on page 14, the petition states that the respondent refused to permit the payment of the amount he conceded he owed until after he was cited for civil contempt. In truth, and as the petition itself states on page 19, "On April 7, 1969, after hearing, individual defendant (respondent) consented to the release of the monies held by the escrow agent in pro tanto satisfaction of his obligation . . .", (which is the payment of the amount respondent admitted to be due) and on the same page further states that over a month later "on May 12, 1969, the district court adjudged individual defendant (respondent) guilty of civil contempt . . . ." Therefore, even though the contempt finding was reversed, it is important to know that the respondent released the

monies from the escrow account prior to being adjudged in the district court guilty of civil contempt, albeit wrongfully so.

On page 15 of the petition, petitioner's attorney would make it appear that he did not receive a fee for all the services rendered in this case and that there would not be a double payment for services rendered. Yet, the same attorney, Mr. Kates, actually testified as follows:

> "What happened is I was hired by Mrs. Lichtenstein (petitioner) in this litigation and in the other basically on a contingent fee basis plus I received a retainer.
>
> Now, I informed Mr. Lichtenstein and Mr. Mann not when I first stepped into the case that I had been engaged on this basis, but when they first attempted to discuss settlement, I told them my fee was dependent upon the recovery, as a matter of fact, in all these litigations. As a matter of fact, part of the recovery, Mrs. Lichtenstein received over and from Darby Farms or from Mr. Lichtenstein applicable to Darby Farms was 2/3 of its capital and this was known" (Appendix, p. 112a, Appeal No. 17,915, 3rd Cir., Hearing of District Court, NT20-21).

On page 23 of the Notes of Testimony of same hearing, Mr. Kates testified as follows:

> "Now, if the Court please, I would like to state for the record this: My fee was contingent. Part of the recovery was 2/3 of the capital stock of Darby

> Farms. When all these matters were resolved I had a part equity interest in the real estate through receiving 2,000 shares of that stock."

Obviously, petitioner's counsel took this case on a completely contingent basis, and has received 2,000 shares of the capital stock of Darby Farms in payment of his fee in all these litigations.

Again, on page 15, the petitioner states that the district court found that the respondent "contumaciously and vexatiously" refused to live up to its agreement. The petition omits that that finding was found "clearly erroneous" by the Circuit Court of Appeals, as has been previously set forth in this brief.

ARGUMENT

I.

Does the sole fact that a litigation over a property settlement agreement between a New Jersey wife and a Pennsylvania husband was brought into federal courts on the basis of diversity of citizenship constitute that litigation one involving a federal question of such public importance as to warrant a review by the United States Supreme Court on a writ of certiorari?

In the opening paragraph in the petition under reasons for granting the writ, the petitioner seems to claim that a federal question is involved merely because this case was tried in a federal court, which, of course, is a completely fallacious and untenable contention. There is no federal question whatsoever involved in this case.

Argument

This case came into the federal court purely on the basis of diversity of citizenship which was not contested and does not pertain to any question of constitutional law, federal practice or procedure, application or interpretation of any federal statute, conflict of opinions of courts of appeals for district circuits, state or territorial questions, the interpretation or application of a decision of this Court or such a departure from the usual course of judicial proceedings as to call for an exercise of this Court's power of review. West's Federal Procedural Manual, Vol. 3, Section 3818 (p. 427).

II.

Where a Circuit Court of Appeals has reversed the findings of a district court on the basis that such findings were "clearly erroneous", on a matter concerning a marital property settlement dispute, should such litigation be reviewed by the United States Supreme Court on certiorari?

This case merely involves the factual determination of whether the respondent's activities in litigation concerning a private dispute over a marriage settlement agreement were conducted in good faith, and if not, whether they were of such vexacious and wanton character as to justify the imposition of petitioner's counsel fees on the respondent. There was and is no dispute about the legal principles involving the power to award counsel fees or the circumstances which must be proven to justify such award. The circuit court's opinion expressly states its agreement with the applicable law as stated by the district court (Pet. Appendix "A", p. 22). The only issue was and is the

question of respondent's good faith, which is clearly a factual issue, and being based on factual determinations is not that type of case, which should be reviewed by this Court on certiorari. United States v. Socony-Vacuum Oil Co., Wis. 1940, 60 S. Ct. 811, 310 U.S. 150, 84 L. Ed. 1129, rehearing denied, 60 S. Ct. 1091, 310 U.S. 658, 84 L. Ed. 1421; N.L.R.B. v. Pittsburgh S.S. Co., 1951, 71 S. Ct. 453, 340 U.S. 498, 95 L. Ed. 479. See also Federal Trade Commission v. Standard Oil Co., 1958, 78 S. Ct. 369, 355 U.S. 396, 2 L. Ed. 2d 359.

Certainly, this cannot be the type of case of such peculiar gravity and general importance as to warrant a review by certiorari by this Court, which should be sparingly exercised and exercised only in cases of general public importance or in cases affecting relations with foreign governments or to secure uniformity of decision. Southern Power Co. v. North Car Public Service Company, N.C. 1924, 44 S. Ct. 164, 263 U.S. 508, 68 L. Ed. 413; Furness v. Yang-Tsze Ins. Ass'n N.Y., 1917, 37 S. Ct. 141, 242 U.S. 430, 61 L. Ed 409; In re Woods, Minn. 1892, 12 S. Ct. 417, 143 U.S.202, 36 L. Ed. 125.

Since this case has been determined by conclusions of the court of appeals and on an analysis of factual circumstances, it is not the type of case that should be subject to review by this Court. United States v. Socony-Vacuum Oil Co., supra; N.L.R.B. v. Pittsburgh S.S. Co., supra; Levinson v. Spector Motor Service, 1945, 59 N.E. 2d 817, 389 Ill. 466, affirmed, 67 S. Ct. 931, 330 U.S. 649, 91 L. Ed. 1158; Federal Trade Commission v. Standard Oil Co., supra.

Argument

III.

Should counsel fees of the petitioner be imposed on respondent where the basic issue of the litigation involved was created by the faulty draftsmanship of petitioner's own attorney in the preparation of the Settlement Agreement, the enforcement of which was the objective of the litigation?

Another compelling consideration against awarding counsel fees to Mr. Kates, who was the petitioner in the application for counsel fees, is that he had participated in drafting the Settlement Agreement and that he did so in such a manner that it actually caused the subject litigation in the determination of the meaning of its terms.

Had this Agreement been specifically drafted to clearly define the duties of the accountant and to specifically express the intention of the parties as to whether or not the accountant's determinations would be appealable, there would not have been any litigation whatsoever.

The Agreement provided that it was to be construed under Pennsylvania law. Pennsylvania law holds that where an Agreement uses the words "binding and conclusive" or words of similar import, but does not contain the words "without exceptions or appeal" or words of similar import, exceptions and appeals definitely and unquestionably can be taken to an accounting. Messina v. Hertzog, 5 Binney's Reports 387; McRoberts v. Burns, 371 Pa. 129 (1952).

Argument

In the case sub judice the Agreement provided that the determination of the accounting should be "conclusive and binding" but did not provide that it would or would not be subject to exception or appeal.

The issue of this entire litigation, outside of the wrongful contempt proceedings, was whether exceptions or appeals could be taken to the accounting.

Had Mr. Kates included in the Agreement, which he drafted and provided was to be construed under Pennsylvania law, that the accounting either was or was not to be subject to exceptions and/or appeals, this entire litigation would never have occurred.

It would indeed be ironic and a travesty on justice if counsel would be allowed fees for services rendered in litigation which his own inadequate draftsmanship had caused. (Please see preface to Argument in which appears Mr. Kates's testimony stating that it was his draft upon which the Settlement Agreement was based.)

IV.

Was the respondent guilty of misconduct in the course of the subject litigation which would warrant the imposition of appellant's counsel fees upon him, etc.?

Disregarding the fact that this case is not within any of the classes of cases to which a review by this Court on certiorari should extend, there is no basis for review on the merits of the case itself.

Argument

The circuit court of appeals in this case has carefully examined the record and has concluded therefrom that "the history of this litigation indicates that appeals to this Court were not frivolous" (Pet. Appendix "A", p. 23), and that "when the husband respondent finally sought to assert that right, he was acting under a plausible, ultimately accurate, construction of the Agreement (Pet. Appendix "A", p. 24).

The circuit court also recognizes that respondent did not appeal his contempt citation in "bad faith", especially since that Court "determined that the order which provided the basis for the contempt finding was vague and ambiguous" (Pet. Appendix "A", p. 24), and reversed the contempt finding.

It is inconceivable that a party who was wrongfully held in civil contempt and had that contempt citation reversed on one appeal, who was erroneously charged with a substantial increase in a judgment and had that judgment modified on a second appeal, and who participated in hearings directed to be held by the circuit court of appeals, could be charged with "bad faith" in taking those two appeals and in participating in the hearing mandated by the circuit court of appeals.

If counsel fees should be awarded to any party, they should be awarded to the respondent, for due to petitioner's premature, ill-conceived and ill-fated petition to hold defendant-(respondent) in contempt, respondent was wrongfully imprisoned and held in contempt; and further he was compelled to file three appeals to secure justice, two of which as described above resulted in

reversals of the orders of the district court and one of which resulted in a substantial modification of the district court's judgment. The third appeal was from the order awarding counsel fees which was reversed by the circuit court of appeals.

There should have been only one issue, which is the one respondent sought in good faith to have adjudicated by the district court and that was whether the determination of the accountant was subject to appeal. There was no need for the contempt proceedings, (respondent promptly paid the judgment of the appellate court when so ordered) and no basis for imposing petitioner's counsel fees on respondent; and there was a devious attempt by petitioner to secure in excess of $12,000 more than the original accounting called for, even though the petitioner, her attorneys and the so called "independent accountant" had previously, consistently and adamantly insisted that the accounting was not subject to any change or amendment.

The sole function of an appellate court concerning the findings of a trial court is to determine if those findings were "clearly erroneous", i.e. whether the appellate court is definitely convinced that a mistake has been committed. The appellate court may not alter the facts found by the trial court unless the appellate court concludes from its review of the record that the findings of the trial court are either (1) completely devoid of minimum evidentiary support displaying some hue of credibility or (2) bear no rational relationship to the supportive evidentiary data. Krasnov v. Dinan, 465 F2d 1298 (3rd Cir. 1972)(cited in the opinion of the circuit court below) (Pet. Appendix "A", p. 22); Speyer Inc. v. Humble Oil and Refining Co., 403 F2d 766, 770 (3rd Cir. 1968).

Argument

The circuit court examined the record and found that the findings of the district court were "clearly erroneous" based, inter alia, upon the following conclusions and facts drawn from its review:

1. "The history of this litigation indicates that appeals to this Court were not frivolous" (Pet. Appendix "A", p. 23).

2. The appellant (respondent) "refused to remit the deficiency as found by the accountant because he believed the accountant erred in his procedure and appellant claimed he had a right to appeal or except to the accountant's findings" (Pet. Appendix "A", p. 23).

3. "When the husband (respondent) finally sought to assert that right, he was acting under a plausible, and ultimately accurate construction of the Agreement" (Pet. Appendix "A", p. 24).

4. The "Appellant can hardly be said to have appealed his contempt citation in 'bad faith' especially since this Court determined that the Order which provided the basis for the contempt finding was vague and ambiguous", and "that appellant-(respondent) was wrongfully held in civil contempt. . ."(Pet. Appendix "A", p. 24).

The federal courts have uniformly held that attorneys' fees may only be awarded in exceptional cases and for dominating reasons of justice. Rolax v. Atlantic Coastline R. Co. et al, 186 F2d 473 (1951); Sprague v. Titonic National Bank, 307 U.S. 161 (1939); Stacy v. Williams, 50 F.R.D. 52 (1970); Hall v. Cole, ___U.S.___(41 U.S.L.W.

4658-59, May 21, 1973). Attorneys fees were denied in the Stacey case because it was not shown that the defense was "maintained in bad faith or for oppressive reasons" (at page 55).

Logic would indicate and it has been held that a strong criterion of good faith appears where the issues before the Court were fairly debatable (emphasis supplied). Reconstruction Finance Corp. v. J.D. Menihan Corp., 42 F. Supp. 244. It would appear axiomatic and should be held as a matter of law that where an appellate court remands a case to the district court for further inquiry to determine the intention of the parties, and where the district court itself has stated that the language in the Agreement appears to be or is ambiguous (p. 5-14 of district court's opinion of September 8, 1970), and where both former and present counsel for Mr. Lichtenstein have in their honest opinion believed that the account was subject to exception and appeal or as Mr. Mann, Mr. Lichtenstein's former counsel stated: "It seemed to me whatever he (the accountant) did, some of the things he was called upon to do were final and conclusive, and some of them were not. . ."(32a-12) the inescapable conclusion must be that at the very least the issues in this case were fairly debatable.

Exceptional circumstances warranting the award of attorneys' fees have been found where funds were created by the action of one party which inured to the benefit of others as in Sprague v. Titonic National Bank, supra; where poor persons were financially unable to afford litigations on just causes and were subjected to discriminatory and oppressive conduct by a powerful labor organization which

was required, as bargaining agent, to protect their interests as in the Rolax v. Atlantic Coast Line R. Co. case, supra; where a trustee or pledger is brought into Court on unfounded charges of mal-administration as in the Guardian Trust Company v. Kansas City Southern Ry. case, 28 F2d 233 (1928); and where one member of a union incurs counsel fees in litigation which confers substantial benefits to all members of the union to spread the costs proportionately among them. Hall v. Cole, supra.

The Sprague case and the Rolax case were cited by the petitioner (Pet. Appendix "A", p. 16) to support the principle that it is within the equity jurisdiction of a district court to award counsel fees "to prevent a party litigant through vexatious and contumacious conduct to escape his post-settlement obligations", Obviously, the above precis show that these cases are completely inapposite and more appropriately support the position of the respondent.

In cases where awards were made for vexatious and contumacious conduct, the activities of the offender were such as to shock the sensibilities of fair and reasonable men. Certainly, there could be no degree of even impropriety, let alone atrocious or contumacious conduct, attributable to respondent when all he did was to use, pursuant to the advice of counsel, the available legal processes to secure a fair determination of his legal rights under an ambiguous agreement and to participate, in a large part of the subject litigation, in a hearing held pursuant to the mandate of the circuit court of appeals.

Argument

In all of Mr. Lichtenstein's actions in this litigation, he has relied on the advices of counsel. Even where a party has actually been in contempt, which is not the case here, the fact that the conttemnor acted on his attorneys' advice is a factor in determining whether attorneys' fees should be assessed against him. If there is room for an honest difference of opinion regarding the legal character of the proposed conduct, the Court in the contempt proceedings may decline to include attorneys' fees in the contemnor's fine (see 8 L. Ed. 2d 911 & 912, Section A, civil contempt). Under the facts in this case, an award of counsel fees would not be justified. Reconstructionist Finance Corp. v. J.D. Menihan Corp., supra.

The petition also cites the case of Bata v. Central Penn Nat. Bk. of Phila. et al., 448 Pa. 355 (1972) (Pet. Appendix "A", p. 16) to support the same principle, stating that the Pennsylvania Supreme Court held that counsel fees would be awarded when, as here, (emphasis supplied) considerations of justice compel such a result; and that counsel fees necessitated by a defendant's numerous breaches of a Settlement Agreement are of the type that should be awarded.

The Bata case is also completely inapposite to the case sub judice, since in the Bata case the lower court and the Supreme Court both found that the offender was guilty of direct contempts of the Court's final decree and two supplemental orders. The atrocious nature of the offender's conduct in that case was such that the Pennsylvania Supreme Court at page 365 made the following statement:

Argument

> "We described the record below as one that for literally volumes sets out the disdain with which the Decrees and Orders of the Court of this Commonwealth were treated".

Beyond doubt, the Bata case, wherein repeated, flagrant contempts were committed and declared by both lower and appellate courts, cannot be compared to the case at bar, wherein, inter alia, there was no contempt but an expeditious and respectful compliance with the judgment of the appellate court.

In the light of the foregoing principles of law, and the findings of the circuit court of appeals as set forth and discussed previously, that the finding by the district court that respondent's defense was not in good faith was "clearly erroneous", there is no justification in awarding attorneys' fees in this case to the petitioner.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

s/ Samuel Rappaport
RAPPAPORT & FURMAN
Attorneys for Respondent